

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF CLINTON

TRUSTWORTHY LLC, d/b/a DAYS INN,

Plaintiff

vs.

VERMONT MUTUAL INSURANCE  
GROUP,

Defendant

INDEX NO. \_\_\_\_\_

**SUMMONS**

**To the above named Defendant:**

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action and to serve a copy of your answer on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service of this summons, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York.

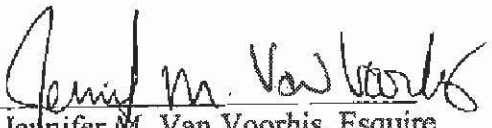
In case of your failure to answer this summons, a judgment by default will be taken against you for the relief demanded in the complaint, together with the costs of this action.

The basis of the venue designation is the business address of the Plaintiff, which is 8 Evereth Drive, Plattsburgh, New York 12901.

Dated: February 17, 2016  
Red Bank, New Jersey

MERLIN LAW GROUP, P.A.

By:

  
Jennifer M. Van Voorhis, Esquire  
New York Bar No.: 4601514

[jvanvoorthis@merlinlawgroup.com](mailto:jvanvoorthis@merlinlawgroup.com)  
125 Half Mile Road, Suite 200  
Red Bank, New Jersey 07701

Ph: 732.933.2700  
Fax: 732.933.2702

To:  
Vermont Mutual Insurance Group  
89 State Street- PO Box 369  
Montpelier, VT. 05601-0369

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF CLINTON

TRUSTWORTHY, LLC d/b/a DAYS INN,

Plaintiff

vs.

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Defendant

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**CIVIL ACTION COMPLAINT**

Plaintiff, TRUSTWORTHY, LLC d/b/a DAYS INN. (hereinafter "Plaintiff"), by and through its attorneys, Merlin Law Group, files this Civil Action Complaint against Defendant, VERMONT MUTUAL INSURANCE GROUP (hereinafter "Defendant"), and states as follows:

**INTRODUCTION**

1. This is an action by the Plaintiff against its insurance carrier, VERMONT MUTUAL INSURANCE GROUP, for benefits owed under its policy which have not been fully paid, as a result of water infiltration following damage to the roofs from heavy snow, ice damming, wind and freezing temperatures.

2. Plaintiff purchased an all risk Business Owners Policy of insurance from Defendant, and consequently issued a Policy No.: BP21029760 to the Plaintiff (the "Policy") for property owned by the Plaintiff, located at 8 Evereth Drive, Plattsburgh, New York. (The "Property").

3. During the winter storm season of November, 2014 through March, 2015, Northern New York was hit with multiple winter storms, resulting in record breaking temperatures and snow fall. On or about May 16, 2015, damage to the Property's interior was

discovered as a result of water infiltration from roof damage from Ice Damming, Heavy Snow Accumulation, and high winds was discovered.

4. Following the discovery of damages, Plaintiff properly and promptly submitted an insurance claim to Defendant for losses and damages to the property caused by wind and water infiltration from weight of ice and snow and ice and snow melt.

5. Plaintiff asked that Defendant cover the losses to the property as a result of the weight of ice and snow, wind and water infiltration damage pursuant to the policy of insurance.

6. Defendant failed to fully pay the damages due and owing under the insurance policy.

#### **PARTIES**

7. Plaintiff, TRUSTWORTHY, LLC, d/b/a DAYS INN, (hereinafter "Plaintiff"), at all times material hereto, was and is owners under the laws of the state of New York of the damaged property, located at 8 Everleth Dr. Plattsburgh, New York.

8. At all material times hereto, Defendant is a Corporation and insurance company authorized to do business in the State of New York.

9. The principal place of business and statutory home office of VERMONT MUTUAL INSURANCE GROUP is 89 State Street, PO Box 369, Montpelier, VT. 05601-0369.

#### **COUNT ONE- BREACH OF CONTRACT**

10. Plaintiff, at all relevant times, has been the owner of the property located at 8 Everleth Dr., Plattsburgh, New York.

11. Defendant at all times material hereto was and still is an insurance company authorized to do business in the State of New York.



12. Defendant issued a Business Policy of Insurance to Plaintiff, underwritten by Defendant under Policy No. BP21029760. This policy insured the property owned by Plaintiff and located at 8 Everleth Dr., Plattsburgh, New York.

13. Said Policy was sold by Defendant to the Plaintiff, all premiums on the Policy were paid; and the Policy was in full force and effect at all relevant times herein.

14. During the winter storm season of November, 2014 through March, 2015, multiple winter storms struck western New York State, causing widespread damage.

15. The extreme cold temperatures, excessive amounts of snow, ice damming and high winds associated with the storms resulted in substantial damage to Plaintiff's property from water intrusion, and significant financial losses and loss of business income.

16. Following discovery of damage to the Property, Plaintiff properly and promptly submitted an insurance claim to Defendant for losses and damages to the property from water intrusion as a result of the extreme cold temperatures, wind, excessive amounts of snow and ice damming.

17. Plaintiff asked that Defendant cover the loss to the Property as a result of damage from the winter storms, pursuant to the policy.

18. Defendant assigned Claim Number BOP49251.

19. Defendant sent an adjuster to the Property to inspect the loss.

20. In order to mitigate further loss, emergency repairs to the roof had been made prior to Defendant's inspection.

21. Based on Defendant's inspection following Plaintiff's attempts to mitigate further damages, Defendant wrongly denied coverage for the damages to Plaintiff's property.

22. This denial of insurance benefits of the covered loss has resulted in further financial damages to Plaintiff's property and business.

23. Plaintiff has suffered damages as the result of water intrusion from the winter storms and breach of contract by Defendant in excess of \$157,000.00.

24. Plaintiff has complied with all policy provisions and has cooperated fully with the investigation of this claim.

25. Defendant, by and through its agents and adjusters, has breached the terms of the Policy by failing to pay all amounts due to the Plaintiff pursuant to the terms of the Policy, in that Defendant did not adequately investigate the entire scope of damages, did not properly determine the cause of the damages, and did not determine the correct value of the damages.

26. Plaintiff provided Defendant with all information necessary to properly evaluate the claim and pay adequate benefits to the insured.

27. Defendant disregarded the information provided by Plaintiff and continued to rely on the incorrect and flawed opinions of its adjuster as a basis to deny the claim.

28. Because the Defendant and/or its agents underpaid Plaintiff on Plaintiff's insurance claim, Plaintiff has not been able to properly and completely repair the damages to its property. This has caused additional, further damage to Plaintiff.

29. Defendant, and/or its agents, failed to properly adjust the claims and Defendant denied the claim without an adequate investigation, even though the Policy provided coverage for losses such as those suffered by Plaintiff.

30. These false representations have allowed Defendant to financially gain by wrongfully denying the Plaintiff's claim.



31. To date, Plaintiff has been underpaid for the covered damages sustained to its property.

32. Despite Plaintiff's compliance with all policy provisions, Defendant refuses to fairly adjust the claims for damage.

33. All Conditions Precedent to recovery have been performed, waived, or have occurred.

34. Defendant failed to perform its contractual duty to adequately compensate Plaintiff under the terms of the Policy. Specifically, Defendant failed and refused to pay sufficient amounts under the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover the damages properties and all conditions precedent to recovery under the Policy had been carried out and accomplished by Plaintiff.

35. Defendant's conduct constitutes a breach of the insurance contract between the Plaintiff and Defendant.

36. Defendant misrepresented to Plaintiff that the damage to the property was not covered under the Policy, even though the damages were caused by a covered occurrence.

37. Defendant further failed to make an attempt to settle Plaintiff's claim in a fair manner, although it was aware of its liability to Plaintiff under the Policy. Defendant refused to fully compensate Plaintiff, under the terms of the Policy, even though Defendant failed to conduct a reasonable investigation. Defendant continues to refuse to fully compensate Plaintiff, without first causing Plaintiff to institute legal action.

38. Defendant has failed to meet its obligations under the New York Insurance Code regarding payment of claim without delay. Specifically, Defendant has delayed full payment of Plaintiff's claim longer than allowed.

39. From and after the time Defendant was presented with Plaintiff's claim, the liability of Defendant to pay the full claim in accordance with the terms of the Policy is reasonably clear. Defendant still refused to pay Plaintiff in full.

40. As a result of Defendant's wrongful acts and omissions, Plaintiff has suffered damages by failing to have the funds to make necessary repairs. As a result, Plaintiff has lost business revenue.

41. The losses incurred by Plaintiff are a direct and foreseeable consequence of Defendant's wrongful conduct. Accordingly, Plaintiff is entitled to an award against Defendant of both direct and compensatory damages in such amounts as established by evidence, as well as pre and post judgment interest, costs, and such further relief as may be just.

WHEREFORE, judgment is demanded in favor of Plaintiff, TRUSTWORTHY LLC, d/b/a DAYS INN against Defendant, VERMONT MUTUAL INSURANCE GROUP for:

- a. Compensatory damages in an amount in excess of \$157,000.00;
- b. Consequential damages as a result of Defendant's Breach of Contract and failure to properly pay the claim;
- c. Interest; and
- d. Such other relief as the Court deems just and equitable.

WHEREFORE, Plaintiff, TRUSTWORTHY LLC, d/b/a DAYS INN, demands a trial by jury, and Judgment against Defendant, VERMONT MUTUAL INSURANCE GROUP, in a sum that fully compensates Plaintiff for its damages in excess of the lower Courts, together with the costs of disbursement of this action.

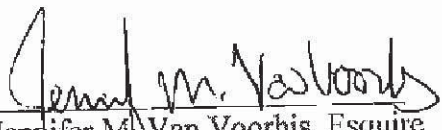
**DEMAND FOR JURY TRIAL**



Plaintiff, TRUSTWORTHY LLC, d/b/a DAYS INN , demands a trial by jury on all issues so triable.

Dated: February 17, 2016  
Red Bank, New Jersey

MERLIN LAW GROUP, P.A.

By:   
Jennifer M. Van Voorhis, Esquire  
New York Bar No.: 4601514  
[jvanvoorhis@merlinlawgroup.com](mailto:jvanvoorhis@merlinlawgroup.com)  
125 Half Mile Road, Suite 200  
Red Bank, New Jersey 07701  
Ph: 732.933.2700  
Fax: 732.933.2702

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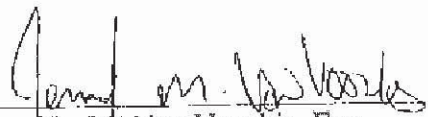
**VERIFICATION BY ATTORNEY**

STATE OF NEW JERSEY    )  
  )ss.:  
COUNTY OF MONMOUTH)

JENNIFER M. VAN VOORHIS, being duly sworn, deposes and says:


That she is the attorney for the Plaintiff, TRUSTWORTHY LLC, d/b/a DAYS INN, in the above-entitled action with offices located at 125 Half Mile Road, suite 200, Red Bank, County of Monmouth, State of New Jersey; that she has read the foregoing COMPLAINT and knows the contents thereof; and by review of the documents and file, knows the same is true to her knowledge, except as to those matters stated to be alleged upon information and belief, and that as to those matters she believes them to be true.

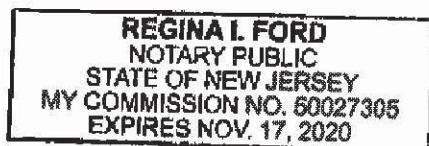
That the reason this verification is made by deponent instead of Plaintiff is because Plaintiff is not within the County of Monmouth which is the County where deponent has her office. Deponent further says that the grounds of her belief as to all matters in the COMPLAINT not stated to be upon her knowledge are based upon conversations with Plaintiff and a review of the file relevant to this action.

  
Jennifer M. Van Voorhis, Esq.  
Attorney for Plaintiff

Sworn before me this

17 day of Feb, 2016

  
Notary Public





INDEXED AND ENTERED  
(CLOCK DATE)

Indexed and Entered

do not write on line above

do not detach

**COURT, CLINTON COUNTY**

INDEXED AND ENTERED  
(CLOCK DATE)

File Number: 2016-00000265  
Kind:  
Plaintiff: TRUSTWORTHY LLC  
VS  
Defendant: VERMONT MUTUAL INSURANCE GROUP

Endorse this INDEX NUMBER  
On All Papers and Exhibits

Doc ID: \*007263450001 Type: CIV  
Recorded: 03/02/2016 at 01:38:08 PM  
Fee Amt: \$210.00 Page 1 of 1  
Clinton, NY  
John H. Zurlo County Clerk

File **2016-00000265**

Clinton, NY  
John H. Zurlo County Clerk  
137 Margaret St  
Ste 101  
Plattsburgh, NY 129012966  
Phone Number: (518)565-4700  
Fax Number: (518)565-4718  
E-Mail: John.Zurlo@clintoncountygov.com

Official Receipt: 2016-00003569  
Printed on 03/02/2016 at 01:39:48 PM  
By: 53 on CCFEE3

MERLIN LAW GROUP

Date Recorded: 03/02/2016

Instrument ID	Recorded Time	Amount
2016-00000265	01:38:00 PM	\$210.00

INDEX NUMBER

TRUSTWORTHY LLC

TO: VERMONT MUTUAL INSURANCE GROUP

Accounts	Amount
RECORDS MANAGEMENT/COURT/CO	\$0.25
CULTURAL ED/COURT/CO	\$0.75
RECORDS MANAGEMENT/COURT/STATE	\$4.75
CULTURAL ED/COURT/STATE	\$14.25
INDEX # COURT/CO	\$25.00
INDEX # COURT/STATE	\$165.00
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SUMMONS	
Accounts	Amount
FILING & MISCELLANEOUS	\$0.00
	01:39:00 PM
COMPLAINT	
Accounts	Amount
FILING & MISCELLANEOUS	\$0.00

Itemized Check Listing